Eco Sky Development Sdn Bhd v Suruhanjaya Perkhidmatan Air Negara and another appeal

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NOS WA-12ANCVC-14-02 OF 2025 AND WA-12ANCVC-15-02 OF 2025

AVINDER SINGH JC

16 OCTOBER 2025

Civil Procedure — Striking out — Appeal against dismissal of striking out application — Respondent alleged appellant under-declared Sewerage Capital Contribution Fund contributions and claimed for underpaid balance — Sessions court dismissed appellant's striking out application and granted judgment for respondent — Whether sessions court's interpretation of 'selling price' under Water Services Industry (Sewerage Capital Contribution Fund) Regulations 2011 was erroneous — Whether appellant entitled to refund — Whether appellant estopped from denying applicability of Kementerian Perumahan dan Kerajaan Tempatan price due to its prior conduct and undertakings — Whether reliance on s 6A of Limitation Act 1953 was correct

The respondent ('plaintiff'), a statutory body under the National Water Services Commission Act 2006, alleged that the appellant ('defendant'), a property developer, had under-declared and underpaid the Sewerage Capital Contribution Fund ('SCCF') by RM660,639.70 for a mixed development project. The payment was required under s 172(2) of the Water Services Industry Act 2006 and the Water Services Industry (Sewerage Capital Contribution Fund) Regulations 2011 ('the 2011 Regulations'), calculated at 1% of the sale price of each unit. The plaintiff claimed that the amount of payment of the 1% depended on the following matters (a) for the sold units: the operative figure would be the sale price in the sale and purchase agreement; and (b) for the unsold units: the sale price would be as submitted to the Kementerian Perumahan dan Kerajaan Tempatan ('KPKT') for the advertising and sales permit pursuant to the Housing Development (Control and Licensing) Regulations 1989. The payments for both the sold and unsold units were to be made in one lump sum within 30 days before the application for final inspection was submitted to Indah Water Konsortium ('IWK'). The defendant made an application for final inspection to IWK on 29 November 2017 and on 16 November 2017, the defendant declared that the contribution was RM7,558,185.30 and had paid the same. The plaintiff conducted meetings and requested additional documents from the defendant to ascertain and corroborate its submissions regarding the payments to be made. The defendant provided the KPKT price list on 29 August 2023 with the prices redacted and only on 2 October 2023 did the defendant provide an unredacted

list, allowing the plaintiff to ascertain the underpaid sum. The plaintiff alleged that the defendant had declared lower selling prices for unsold units and misclassified six units as sold when they were not, resulting in an under declaration of the required 1% contribution. On 22 July 2024, the plaintiff commenced a suit under O 14A of the Rules of Court 2012 in the sessions court for the underpaid balance. The defendant applied to strike out the writ and statement of claim on the premise that the plaintiff's claim was time-barred pursuant to s 6 of the Limitation Act 1953 ('the LA') as the SCCF contribution was made in November 2017. The defendant also took the position that the SCCF contribution for unsold units was calculated at 1% of the KPKT prices, which were interim, pending the actual sale of these units. It was only upon the sale that the defendant would be obliged to settle the SCCF contribution based on the actual selling price, with refunds being made for any overpayment. The sessions court ruled in favour of the plaintiff and dismissed the defendant's application. Hence, these appeals.

Held, dismissing the appeals:

(1) On a literal reading of regs 2, 3 and 4 of the 2011 Regulations, the 1% contribution, taken on the operative date of 29 November 2017, could only be determined with reference to the KPKT price, not any other price. There was no ambiguity in the 2011 Regulations; the words used were unequivocal; and the literal interpretation of the regulations was warranted to give effect to the meaning and intent of the legislation. There was no statement in the Regulations, even vaguely, to suggest that the KPKT prices were interim or provisional. Consequently, the findings of the sessions court that the operative price for unsold units was the KPKT price, and that the KPKT price was not an interim price, was affirmed (see paras 59 & 63–65).

(2) There was no merit in the defendant's argument about the refund. Regulation 5 of the 2011 Regulations allowed refunds only for overpayments. It did not support retrospective adjustments based on subsequent sales. The defendant never requested a refund, undermining its own argument that payments were provisional (see para 66).

(3) The sessions court judge ('SCJ') found that the defendant delayed the verification process by submitting incomplete and redacted documents, which prevented the plaintiff from discovering the shortfall earlier. The cause of action only accrued later, thereby undermining the defendant's limitation defence. The SCJ also found that if the defendant had, in fact, believed that it was entitled to a refund, it would surely have made such a claim earlier. This inaction or abject silence militated against the claim for a refund. Such a claim was therefore without merit. The findings of the SCJ were affirmed (see paras 69–72).

(4) The SCJ erred when invoking s 6A of the LA to decide against the defendant's application that the suit was barred by limitation because it was not pleaded. In any event, it was inapplicable to the facts, as there were no issues of negligence or damages in these factual circumstances. However, despite the SCJ's consideration of the unpleaded issues of negligence and s 6A of the LA, which were erroneous on these facts, there was ample evidence to show that the decision to dismiss the defendant's application was correct. There was no prejudice on the defendant by the SCJ's reliance on s 6A of the LA. The SCJ may have addressed his mind to an unpleaded issue, but his appreciation of the facts as to when the cause of action arose for the purposes of assessing when time ought to run was correct. Time only began to run from 2 October 2023, that was, the date when the defendant provided the plaintiff with the unredacted list. Therefore, there was no utility to be served by remitting this matter back to the sessions court for a trial solely on the issue of limitation, as this would merely prolong the inevitable, and more importantly, would amount to a waste of judicial time and resources (see paras 85 & 94–97).

[Bahasa Malaysia summary

Responden ('plaintif'), sebuah badan berkanun di bawah Akta Suruhanjaya Perkhidmatan Air Negara 2006, mendakwa bahawa perayu ('defendan'), seorang pemaju hartanah, telah mengisytiharkan dan membayar kurang daripada jumlah yang ditetapkan kepada Kadar Perkhidmatan Bekalan Air ('SCCF') sebanyak RM660,639.70 bagi sebuah projek pembangunan bercampur. Pembayaran itu dikehendaki di bawah s 172(2) Akta Industri Perkhidmatan Air 2006 dan Peraturan-Peraturan Industri Perkhidmatan Air (Kadar Perkhidmatan Bekalan Air) 2011 ('Peraturan 2011'), dikira pada kadar 1% daripada harga jual setiap unit. Plaintif mendakwa bahawa jumlah pembayaran 1% bergantung kepada perkara berikut: (a) bagi unit yang telah dijual: angka operatif ialah harga jual dalam perjanjian jual beli; dan (b) bagi unit yang belum dijual: harga jual ialah seperti yang dikemukakan kepada Kementerian Perumahan dan Kerajaan Tempatan ('KPKT') untuk permit pengiklanan dan jualan menurut Peraturan-Peraturan Pemajuan Perumahan (Kawalan dan Pelesenan) 1989. Pembayaran bagi kedua-dua unit yang dijual dan belum dijual hendaklah dibuat secara sekaligus dalam tempoh 30 hari sebelum permohonan pemeriksaan akhir dikemukakan kepada Indah Water Konsortium ('IWK'). Defendan membuat permohonan pemeriksaan akhir kepada IWK pada 29 November 2017 dan pada 16 November 2017 defendan mengisytiharkan kadar sebanyak RM7,558,185.30 dan telah membayarnya. Plaintif mengadakan mesyuarat dan meminta dokumen tambahan daripada defendan untuk memastikan dan mengesahkan pengisytiharan pembayaran tersebut. Defendan menyerahkan senarai harga KPKT pada 29 Ogos 2023 dengan harga disunting dan hanya pada 2 Oktober 2023 defendan menyediakan senarai tidak disunting, membolehkan plaintif menentukan jumlah yang terhutang. Plaintif mendakwa defendan telah mengisytiharkan

A harga jual yang lebih rendah bagi unit belum dijual dan mengklasifikasikan enam unit sebagai telah dijual sedangkan tidak, menyebabkan pengisytiharan 1% yang diperlukan menjadi kurang. Pada 22 Julai 2024, plaintif memulakan saman di bawah A 14A Kaedah-Kaedah Mahkamah 2012 di mahkamah sesyen untuk baki yang belum dibayar. Defendan memohon untuk membatalkan writ B dan pernyataan tuntutan atas premis bahawa tuntutan plaintif telah tertakluk kepada had masa menurut s 6 Akta Had Masa 1953 ('LA') kerana sumbangan SCCF dibuat pada November 2017. Defendan juga mengambil pendirian bahawa kadar SCCF bagi unit belum dijual dikira pada 1% daripada harga KPKT, yang bersifat sementara, menunggu penjualan sebenar unit tersebut; C hanya apabila berlaku penjualan defendan diwajibkan menyelesaikan sumbangan berdasarkan harga jual sebenar, dengan pemulangan untuk sebarang lebihan bayaran. Mahkamah sesyen memutuskan memihak kepada plaintif dan menolak permohonan defendan. Oleh itu, rayuan-rayuan ini.

D

Diputuskan, menolak rayuan-rayuan:

(1) Dengan bacaan literal peraturan 2, 3 dan 4 Peraturan 2011, sumbangan 1% pada tarikh berkuatkuasa 29 November 2017 hanya boleh ditentukan dengan rujukan kepada harga KPKT, bukan mana-mana E harga lain. Tiada kekaburan dalam Peraturan 2011; kata-kata yang digunakan adalah jelas; dan tafsiran literal peraturan tersebut wajar bagi memberi kesan kepada maksud dan niat perundangan. Tiada pernyataan dalam Peraturan, walaupun samar, yang mencadangkan bahawa harga KPKT bersifat sementara. Oleh itu, penemuan mahkamah sesyen F bahawa harga operatif bagi unit belum dijual ialah harga KPKT, dan bahawa harga KPKT bukan harga sementara, adalah disahkan (lihat perenggan 59 & 63–65).

(2) Tiada merit dalam hujah defendan mengenai pemulangan. Peraturan 5 Peraturan 2011 membenarkan pemulangan hanya untuk lebihan G bayaran. Ia tidak menyokong pelarasan retrospektif berdasarkan jualan kemudian. Defendan tidak pernah memohon pemulangan, yang menjejaskan hujahnya bahawa pembayaran adalah bersifat sementara (lihat perenggan 66).

H (3) Hakim mahkamah sesyen ('HMS') mendapati defendan melambatkan proses pengesahan dengan mengemukakan dokumen yang tidak lengkap dan disunting, yang menghalang plaintif daripada menemui kekurangan bayaran lebih awal. Oleh itu, kausa tindakan hanya timbul kemudian, yang menjejaskan pembelaan had masa defendan. HMS juga mendapati I bahawa sekiranya defendan benar-benar berpendapat layak untuk pemulangan, defendan pasti akan membuat tuntutan sedemikian lebih awal. Ketiadaan tindakan atau kesenyapan sedemikian menentang tuntutan untuk pemulangan. Tuntutan sedemikian dengan itu tidak berasas. Penemuan HMS adalah disahkan (lihat perenggan 69–72).

(4) HMS terkhilaf apabila merujuk s 6A LA untuk memutuskan terhadap permohonan defendan bahawa saman itu tertakluk kepada had masa kerana ia tidak diplid. Walau apa pun, ia tidak terpakai kepada fakta kes ini kerana tiada isu kecuaian atau ganti rugi dalam keadaan fakta ini. Walau bagaimanapun, walaupun HMS mempertimbangkan isu kecuaian dan s 6A yang tidak diplid, yang terbukti salah pada fakta ini, terdapat bukti secukupnya bahawa keputusan menolak permohonan defendan adalah betul. Tiada prejudis terhadap defendan dengan rujukan HMS kepada s 6A. HMS mungkin telah membincangkan isu yang tidak diplid, tetapi penilaiannya terhadap fakta bila kausa tindakan timbul bagi tujuan menentukan bila tempoh masa patut bermula adalah betul. Masa hanya mula berjalan pada 2 Oktober 2023, iaitu tarikh defendan menyediakan senarai tidak disunting kepada plaintif. Oleh itu, tiada gunanya merujuk semula perkara ini ke mahkamah sesyen untuk perbicaraan semata-mata mengenai isu had masa kerana itu hanya akan melanjutkan perkara yang tidak dapat dielakkan dan, yang lebih penting, akan membazirkan masa dan sumber kehakiman (lihat perenggan 85 & 94–97).]

Cases referred to

Cekap Mesra Development Sdn Bhd v Che Seman bin Abdullah [2021] MLJU 2292; [2021] CLJU 1817, HC (folld)

Dream Property Sdn Bhd v Atlas Housing Sdn Bhd [2008] 2 MLJ 812, CA (refd)

Havi Logistics (M) Sdn Bhd v Pemungut Duti Setem [2025] 2 MLJ 845; [2025] CLJU 143, FC (folld)

Julian Chong Sook Keok & Anor v Lee Kim Noor & Anor [2024] 3 MLJ 544, FC (refd)

Permodalan Plantations Sdn Bhd v Rachuta Sdn Bhd [1985] 1 MLJ 157; [1985] CLJ Rep 242, FC (refd)

RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd [2010] 2 MLJ 188; [2010] 1 CLJ 665, FC (refd)

Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased) [2020] 4 MLJ 721; [2020] 7 CLJ 561, FC (folld)

Thein Hong Teck & Ors v Mohd Afrizan bin Husain and another appeal [2012] 2 MLJ 299, FC (refd)

Legislation referred to

Housing Development (Control and Licensing) Regulations 1989

Limitation Act 1953 ss 4, 6, 6(1), (1)(d), 6A, 6A(4)

Rules of Court 2012 O 14A, O 14A r 1, O 15 r 2, 2(2), (3), O 18 r 12(1), O 33 r 5

Water Services Industry Act 2006 ss 2, 172, 172(2)

Water Services Industry (Sewerage Capital Contribution Fund) Regulations

2011 regs 2, 3, 3(1), 4, 5, First Schedule, para 1

Appeal from: *Suruhanjaya Perkhidmatan Air Negara lwn Dan Eco Sky Development Sdn Bhd* [2025] MLJU 602 (Sessions Court, Kuala Lumpur)

Tharminder Singh (with Andrew Phua) (Izral Partnership) for the appellant.
Yan Nie Th'ng (Donovan & Ho) for the respondent.

Avinder Singh JC:

INTRODUCTION

[1] The appeals in WA-12ANCVC-14–02 of 2025 and WA-12ANCVC-15–02 of 2025 concern the interpretation and application of the Water Services Industry (Sewerage Capital Contribution Fund) Regulations 2011 ('the 2011 Regulations'); the issue of limitation under the Limitation Act 1953, and the suitability of summary determination under O 14A of the Rules of Court 2012 ('the ROC').

[2] The appellant in both appeals was the defendant in the court below.

[3] The parties will be referred to here as they were in the sessions court.

[4] The defendant's application to strike out the writ and statement of claim (encl 10), and the plaintiff's application under O 14A (encl 12) were heard together, and the sessions court delivered a single decision as seen from the grounds of judgment in both appeals.

THE PLAINTIFF'S APPLICATION WAS MADE UNDER O 14A AND O 33 R 5 OF THE RC 2012: ENCL 12

[5] This application is the substance of Appeal No 14 by the defendant.

[6] The dispute arose from the defendant's mixed development project. The plaintiff alleged that the defendant had declared lower selling prices for unsold units and misclassified six units as sold when they were not, resulting in an under declaration of the required 1% contribution.

[7] The plaintiff applied to determine the following questions:

(a) question 1: based on the 2011 Regulations, whether the 'selling price' of each unit for the purposes of determining and calculating the amount of contribution payable towards the Sewerage Capital Contribution Fund ('SCCF') is based on the facts and circumstances (ie, sale status) as at the notice submission date; and

(b) question 2: based on the Water Services Industry Act 2006 ('the WSIA')and the 2011 Regulations, whether the plaintiff is only entitled to impose and collect the SCCF contribution at the rate of 1% of the actual selling price; and whether any contribution paid in respect of unsold units based on the Kementerian Perumahan dan Kerajaan Tempatan ('KPKT') price is only interim pending the sale of those units?

THE DEFENDANT'S APPLICATION UNDER O 14A AND O 18 R 19 OF THE RC 2012: ENCL 10

[8] This application by the defendant was to strike out the writ and statement of claim on the premise that the plaintiff's suit was barred by limitation as the defendant contended that the plaintiff's claim for underpayment to the SCCF was made more than six years by the time the suit was filed, explicitly stating that the delay was six years, eight months and 15 days after the last date of the defendant's SCCF contribution on 7 November 2017.

[9] This application is the substance of Appeal No 15 by the defendant.

THE PLAINTIFF'S CLAIM

[10] The plaintiff, a statutory body under the Water Services Industry Act 2006, claimed that the defendant, a property developer, had under-declared and underpaid the SCCF by RM660,639.70 for a mixed development project.

[11] The payment was required under s 172(2) of the WSIA 2006 and the 2011 Regulations, calculated at 1% of the sale price of each unit.

[12] The plaintiff had claimed that the amount of payment of the 1% depended on the following matters:

(a) for the sold units: the operative figure would be the sale price in the sale and purchase agreement ('SPA');

(b) for the unsold units: the sale price would be as submitted to the KPKT for the advertising and sales permit pursuant to the Housing Development (Control and Licensing) Regulations 1989; and

(c) the payments for both the sold and unsold units were to be made in *one lump sum within 30 days before the application* for final inspection was submitted to Indah Water Konsortium ('IWK').

[13] The defendant had made an application for final inspection to IWK on 29 November 2017. Based on this, the plaintiff contended that the final date for the lump sum payment for both sold and unsold units was therefore

29 November 2017. On 16 November 2017, the defendant declared that the contribution was RM7,558,185.30 and had paid the same.

[14] The dispute centred on whether the sale price should be based on the actual SPAs or the prices submitted to KPKT for unsold units when the final inspection notice was submitted.

[15] The plaintiff contended that after the defendant made its submission, the plaintiff invited the defendant, on 22 December 2017, to meetings to ascertain and corroborate its submissions regarding the payments to be made:

(a) following a meeting on 14 January 2019, the plaintiff requested additional documents from the defendant;

(b) following an investigation and confirmation session conducted on 15 June 2022, the plaintiff issued a notice, dated 20 June 2022, seeking further documents from the defendant, specifically the KPKT price list for the unsold units;

(c) the defendant did not respond; therefore, the plaintiff sought the price list again on 4 January 2023 and then again on 10 August 2023;

(d) it was only after the plaintiff issued a further notice on 21 August 2023 that the defendant provided the price list on 29 August 2023, with the prices redacted. Only on 2 October 2023 did the defendant provide an unredacted list, allowing the plaintiff to ascertain the underpaid sum. The defendant also issued a fresh SCC Form K-1, purportedly correcting the earlier version submitted on 13 November 2017;

(e) after 2 October 2023, the plaintiff invoked s 172 of the WSIA 2006 and the 2011 Regulation, resulting in demands for the underpayment. These demands were made on 16 October 2023, 4 December 2023, 27 December 2023, 18 January 2024, 23 February 2024, 8 April 2024, 21 May 2024, 11 June 2024, and 28 June 2024;

(f) the plaintiff demanded four figures [explained below] culminating in the final demand on 28 June 2024, where the sum of RM660,639.70 owed by the defendant was demanded; and

(g) since no payments were forthcoming from the defendant, the Suit was filed in the sessions court, claiming the underpaid balance of RM660,639.70.

THE DEFENCE AND THE REPLY

[16] The defendant denied liability on various grounds, including that the KPKT prices were provisional, and submitted that the claim was time-barred under the Limitation Act 1953.

[17] The defendant filed a defence and counterclaim, asserting that it had paid RM7.56m in contributions in 2017 based on the actual selling prices of 744 sold units and provisional selling prices for 231 unsold units. A

[18] The defendant pleaded that, for residential units that had been sold, the contribution amount of 1% would be calculated on the sale price, whereas, for those units intended for sale but not yet sold, the contribution of 1% would be calculated on the price stated by the defendant to the Controller of KPKT, in its application for an advertisement and sale permit under the Housing Development (Control and Licensing) Regulations 1989. B C

[19] Such payment was to be made in a lump sum within 30 days prior to the notice of final inspection. The defendant contended that if there was any overpayment of the contribution to SCCF for the unsold units, the defendant could apply for a refund, without interest, within 30 days of verification of such overpayment. D

[20] The defendant contended that it was only on 2 June 2022 that the plaintiff requested a list of the selling price of the residential units; and that the plaintiff only undertook its inspection and verification on 15 June 2022 (about five years after the defendant's payment to the SCCF and the grant of certificate of completion and compliance ('CCC') in 2017/2018). E

[21] The defendant contended that it had appealed to the plaintiff to refer to the actual selling price list submitted to KPKT on 4 August 2022. It was only one year later, on 10 August 2023, that the plaintiff requested the KPKT list. F

[22] The plaintiff allegedly undertook a verification after the defendant submitted the unredacted list on 2 October 2023. On 16 October 2023, the plaintiff demanded a sum of RM637,385.24, being the alleged shortfall ('alleged shortfall 1.0'). G

[23] The defendant further contended that the plaintiff revised its calculations multiple times, lacked consistency, and failed to justify the final amount claimed. H

[24] The defendant appealed the amount claimed by the plaintiff. However, after a demand from the plaintiff's Solicitors on 21 May 2024, the plaintiff cancelled alleged shortfall 1.0 and revised the figure to RM662,509.70 ('alleged shortfall 2.0'). I

[25] On 11 June 2024, the plaintiff cancelled alleged shortfall 2.0 and revised the same to a sum of RM660,069.70 ('alleged shortfall 3.0').

A **[26]** On 28 June 2024, the plaintiff cancelled alleged shortfall 3.0 and revised the figure to RM660,639.70 ('alleged shortfall 4.0'). This is the final figure claimed in the suit.

B **[27]** The defendant argued that the plaintiff's claim was time-barred pursuant to s 6 of the Limitation Act 1953 on the basis that the SCCF contribution was made in November 2017 and that any claims for shortfall should commence from then.

C **[28]** In this regard, the defendant took the position that the SCCF contribution for unsold units was calculated at 1% of the KPKT prices, which are interim, pending the actual sale of these units. It is only upon the sale that the defendant would be obliged to settle the SCCF contribution based on the actual selling price, with refunds being made for any overpayment.

D **[29]** The counterclaim sought declarations that the defendant had fulfilled its obligations, and that the plaintiff's demands in excess of 1% of the actual selling prices were unlawful and unreasonable, and the failure to refund any excess was arbitrary, unreasonable, illegal and/or ultra vires.

E **[30]** The plaintiff replied by reaffirming its position, denying the time-bar argument, and emphasising that the contribution must be calculated based on the status and prices as of the date of the final inspection notice, which was 29 November 2017.

F **[31]** The plaintiff admitted that it had wrongly calculated the shortfall but pleaded that no prejudice was caused to the defendant, who, in any event, did not make any payment.

G **[32]** The plaintiff also highlighted that the defendant had breached its own undertakings in the SCC Form K-1 and delayed submission of supporting documents until 2023, which hindered timely verification.

H **[33]** The plaintiff also maintained that the defendant's interpretation of the law was flawed and that the counterclaim lacked merit, constituting an abuse of court process.

THE SESSIONS COURT'S DECISION

I **[34]** The sessions court considered the two legal questions posed on the plaintiff's application as stated above.

[35] The sessions court:

(a) found that the selling price must be determined based on the status of the sale as of the notice submission date (29 November 2017), and that contributions based on KPKT prices were not interim but binding;

(b) relied on O 14A r 1 of the RC 2012, which allows the determination of legal questions where material facts are not in dispute and a decision would dispose of the matter;

(c) referred to s 172(2) of the WSIA 2006 and Regulations 3 and 4 of the 2011 Regulations, which require contributions to be paid in a single lump sum 30 days before the final inspection.

(d) relied on *Dream Property Sdn Bhd v Atlas Housing Sdn Bhd* [2008] 2 MLJ 812, which emphasised that O 14A of the RC 2012 is appropriate where facts are undisputed; *Thein Hong Teck & Ors v Mohd Afrizan bin Husain and another appeal* [2012] 2 MLJ 299, which reinforced that material facts must be undisputed; *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ 721; [2020] 7 CLJ 561, which supported literal statutory interpretation; *Julian Chong Sook Keok & Anor v Lee Kim Noor & Anor* [2024] 3 MLJ 544, which confirmed the discoverability principle under s 6A of the Limitation Act 1953; and *Havi Logistics (M) Sdn Bhd v Pemungut Duti Setem* [2025] 2 MLJ 845; [2025] CLJU 143, which emphasised giving effect to legislative intent; and

(e) found that since the cause of action accrued only when the plaintiff received complete documentation on 2 October 2023, the action was not time-barred; and that the relevant sale price for the unsold units was the one determined on the date of the final inspection notice (29 November 2017), and not subsequent actual sale prices.

[36] The sessions court ruled in favour of the plaintiff, granting judgment for RM660,639.70 with 5%pa interest from the date of judgment until full settlement, and awarded RM5,000 in costs and dismissed the defendant's application, also with costs of RM5,000.

THE DEFENDANT'S GROUNDS OF APPEAL IN BOTH APPEALS

The grounds of the appeals are now addressed to determine whether these grounds reveal merit and whether the decision of the court below was an error that requires intervention by this court

[37] *Unsuitability of summary determination*: the defendant contended that:

(a) the sessions court erred in disposing of the matter via summary determination in the plaintiff's application under O 14A and/or O 33 r 5

of the RC 2012;

(b) the case involved complex factual disputes requiring viva voce evidence, including the mechanics of the SCCF, contribution rates, refund mechanisms, and discrepancies in unit sales data; and

(c) the sessions court had failed to consider relevant authorities and had misconstrued the legal threshold for summary disposal.

[38] *Limitation of action*: the defendant asserted that:

(a) the plaintiff's claim is time-barred under s 6(1) of the Limitation Act 1953;

(b) while the cause of action had accrued on 30 October 2017, the claim was filed on 22 July 2024, thereby exceeding the six-year limitation period.

(c) the sessions court had improperly invoked s 6A of the Limitation Act 1953 based on an unpleaded case of negligence, which is inapplicable to statutory duties under the WSIA 2006; and

(d) even if the issue of plaintiff's O 14A of the RC 2012 is allowed, and the defendant's application to strike out was dismissed, the necessary consequence would be the need to deal with the issue of limitation at trial, as that would impact the outcome of the defendant's application. This is because allowing the plaintiff's O 14A of the RC 2012 would, in normal circumstances, have invited the consequence of a judgment being entered against the defendant. However, the limitation issue raised by the defendant still needs to be decided, as limitation is a complete defence to a claim when properly raised and found to be applicable. The defendant, therefore, contends that the court was wrong to dismiss the defendant's application in encl 10.

[39] *Erroneous interpretation of 'selling price'*: the defendant:

(a) challenged the sessions court's interpretation of 'selling price' under the 2011 Regulations;

(b) submitted that the contributions to the SCCF should be calculated based on the actual selling price stated in the SPA, and that the KPKT price (for the unsold units) is a projected ceiling price;

(c) argued that reg 5 of the 2011 Regulations permits refunds for overpayments, reinforcing the interim nature of the KPKT price for the unsold units; and

(d) argued that applying different rates based on sale timing is unfair and contrary to legislative intent.

[40] *Procedural irregularities and failure to adjudicate the counterclaim*: the defendant submitted that:

(a) the counterclaim sought declarations about the legality of the plaintiff's computation method and a finding that the defendant had fulfilled its obligations to make contributions to the SCCF;

(b) the sessions court had failed to adjudicate its counterclaim independently, contrary to O 15 r 2 of the RC 2012; and

(c) the dismissal of the counterclaim, without proper consideration, constitutes a procedural error.

[41] *Lack of reasonable diligence by the plaintiff*: the defendant argued that:

(a) the plaintiff failed to exercise reasonable diligence in verifying the SCCF payment;

(b) despite having access to relevant documents since 2017, the plaintiff only initiated verification in 2022; and

(c) the sessions court erred in accepting the plaintiffs narrative without evidentiary support.

[42] The defendant submitted that, based on the above, the matter was unsuitable for summary determination; that the claim was time-barred; and the interpretation employed on the statutory provision was erroneous.

[43] The defendant seeks relief that both appeals be allowed.

THE PLAINTIFF'S POSITION

[44] The plaintiff rebuts the defendant's submissions by making the following submissions:

(a) on the issue of the interpretation to be ascribed to the term 'selling price', the plaintiff contended that the defendant's interpretation is inconsistent with the statutory language and its own conduct. The plaintiff says that the SCCF contributions must be calculated based on the sale status of units as at the notice submission date. For sold units, the SPA price applies; for unsold units, the KPKT price must be used. The plaintiff rejects the defendant's claim that the KPKT price is merely interim, stating that the 2011 Regulations do not support such a reading and that the defendant had failed to declare the correct prices; and

(b) on the issue of limitation, the plaintiff argues that its cause of action only accrued on 2 October 2023, when it received complete and unredacted documents from the defendant, and obtained full knowledge of the

prices from which the plaintiff could tabulate the underpayment. The plaintiff contended that previously, it lacked sufficient information due to the defendant's piecemeal and redacted disclosures. Citing s 6A(4) of the Limitation Act 1953 and relevant case law, the plaintiff asserts that the limitation period only begins when the plaintiff has 'knowledge required for bringing an action for damages in respect of the relevant damage'. The plaintiff emphasises that it acted with reasonable diligence and that the defendant's delay and concealment of documents preclude its reliance on limitation.

[45] The plaintiff submits that:

(a) reg 5 of the 2011 Regulations pertains only to refunds for overpayments and does not imply that contributions based on KPKT prices are interim;

(b) the defendant's reliance on reg 5 of the 2011 Regulations is misconceived, and the sessions court correctly interpreted the provision; and

(c) the defendant never requested a refund, undermining its fairness claims.

[46] The plaintiff defends the sessions court's interpretation as legally sound and consistent with the statutory purpose of the WSIA 2006 and Regulations. It argues that the defendant is estopped from denying the applicability of the KPKT price due to its prior conduct and undertakings. The plaintiff also rebuts the claim that the sessions court failed to consider the defendant's arguments, noting that the judge addressed all relevant issues and evidence. The plaintiff highlights that the defendant cannot approbate and reprobate by asserting contradictory positions in judicial review and appeal.

[47] The plaintiff concludes that the defendant's appeals lack merit and should be dismissed. The rebuttals affirm the correctness of the sessions court's findings and the plaintiff's compliance with the statutory framework governing the SCCF contributions. The plaintiff's cause of action was timely, and the defendant's procedural and substantive objections are untenable.

DECISION

Interpretation of 'selling price' under the 2011 Regulations

[48] Section 172 of the WSIA 2006 is the starting point to consider the position of both parties.

[49] Section 172 of the WSIA 2006 establishes the SCCF, which is managed by the Commission and funded by contributions from developers who

construct buildings connected to public sewers, sewage treatment works lacking certain facilities, or septic tanks requiring off-site sludge processing. The SCCF is used to support capital expenditure for public sewerage systems, implement regional systems, or other minister-approved purposes. The Commission is required to maintain proper accounts and activity reports, prepare annual financial statements, and submit audited reports to the Minister for tabling in Parliament, ensuring transparency and accountability in the SCCF's administration.

[50] Pursuant to s 2 of the WSIA 2006, 'Commission' means the Suruhanjaya Perkhidmatan Air Negara established under the Suruhanjaya Perkhidmatan Air Negara Act 2006.

[51] Regulation 2 of the 2011 Regulations states:

> *'selling price'* in relation to the price of —
>
> (a) building which is *intended for sale and has been sold*, excluding specific buildings, *means the selling price specified* in the *sale and purchase agreement*; or
>
> (b) *residential* building which is *intended for sale but has not been sold*, excluding specific buildings, *means the selling price* of that particular unit that has been *submitted to the Controller* for the application of an advertisement and sale permit under the Housing Development (Control and Licensing) Regulations 1989 [P.U. (A) 58/1989];

[52] Regulation 3(1) of the 2011 Regulations, on the other hand, states:

> (1) A contribution to the Fund made by any developer or person referred to in subsection 172(2) *of the Act shall be at the rate as specified in the First Schedule.*

[53] Paragraph 1 of the First Schedule of the 2011 Regulations states:

Any developer or person who constructs the following building and connects the building to a public sewer:	
(a) building which is intended for sale and has been sold;	1.00% of selling price of each unit.
(b) residential building which is intended for sale but has not been sold;	1.00% of selling price of each unit.

[54] This provision emphasises that the only consideration is '1% of the selling price of each unit'.

[55] Therefore, the question that must be answered is what is meant by the phrase '1% of the selling price of each unit'.

[56] The learned sessions court judge answered this question in paras 76–90 of his judgment and stated that to determine the selling price, the matter must be considered in light of when the contribution is to be paid.

[57] In this regard, the learned sessions court judge correctly referred to reg 4 of the 2011 Regulation, which states:

> The payment of contribution referred to in regulation 3 shall be made to the Commission in a lump sum and in the case of —
>
> (a) a building which is connected to a public sewer, within thirty days before the notice of final inspection is submitted to the Commission by the developer or person mentioned in regulation 3;

[58] The date in reg 4 above, for the purposes of these appeals, is 29 November 2017. The only question, therefore, is which figure is the operative to calculate the 1% of the prices for the unsold units.

[59] What is clear is that these prices were the KPKT prices. On a literal reading of regs 3 and 4 of the 2011 Regulations, read in tandem with reg 2 of the same, the 1% contribution, taken on the operative date of 29 November 2017, can only be determined with reference to the KPKT price, not any other price.

[60] This required an interpretation of the 2011 Regulations and the interplay between the Regulations to ascertain how the matter ought to be approached. The following authorities guide me.

[61] The learned sessions court judge relied on *Tebin bin Mostapa* where the Federal Court succinctly stated as follows:

> [30] In our opinion, the rules governing statutory interpretation may be summarised as follows. *First, in construing a statute, effect must be given to the object and intent of the Legislature in enacting the statute. Accordingly, the duty of the court is limited to interpreting the words used by the Legislature and to give effect to the words used by it.* The court will not read words into a statute unless clear reason for it is to be found in the statute itself. Therefore, in construing any statute, the court will look at the words in the statute and apply the plain and ordinary meaning of the words in the statute. *Second, if, however the words employed are not clear, then the court may adopt the purposive approach in construing the meaning of the words used.* Section 17A of the Interpretation Acts 1948 and 1967 provides for a purposive approach in the interpretation of statutes. *Therefore, where the words of a statute are unambiguous, plain and clear, they must be given their natural and ordinary meaning.* The statute should be construed as a whole *and the words used in a section must be given their plain grammatical meaning. It is not the province of the court to add or subtract any word; the duty of the court is limited to interpreting the words used by the Legislature and it has no power to fill in the gaps disclosed.* Even if the words in a statute

may be ambiguous, the power and duty of the court 'to travel outside them on a voyage of discovery are strictly limited'. *Third, the relevant provisions of an enactment must be read in accordance with the legislative purpose and applies especially where the literal meaning is clear and reflects the purposes of the enactment.* This is done by reference to the words used in the provision; where it becomes necessary to consider every word in each section and give its widest significance. An interpretation which would advance the object and purpose of the enactment must be the prime consideration of the court, so as to give full meaning and effect to it in the achievement to the declared objective. As such, in taking a purposive approach, the court is prepared to look at much extraneous materials that bears on the background against which the legislation was enacted. It follows that a statute has to be read in the correct context and that as such the court is permitted to read additional words into a statutory provision where clear reasons for doing so are to be found in the statute itself.

[62] The learned sessions court judge also relied on *HAVI Logistics*, which stated:

[32] In construing the Act and the First Schedule thereto, it must be borne in mind that legislative intent must be given effect to and the function of the court is to interpret the statute 'according to the intent of them that made it and the intention must be deduced from the language used' (per Lord Parker CJ in *Capper & Anor v Baldwin* [1965] 2 QB 53 at p 61).

[63] Taking the cue from the above passages, both being decisions of the Federal Court, this court finds that there is no ambiguity in the 2011 Regulations; that the words used are unequivocal; and that the literal interpretation of the regulations is warranted to give effect to the meaning and intent of the legislation. The function of the court is limited to the interpretation of the words used by the Legislature. This court therefore agrees with the findings of the learned sessions court judge here and has no reason to interfere with the decision in this part of that judgment.

[64] There is no statement in the Regulations, even vaguely, to suggest that the KPKT prices are interim or provisional.

[65] Consequently, this court affirms the findings in paras 76–91 of the sessions court judgment that the operative price for unsold units is the KPKT price, and that the KPKT price is not an interim price.

Regulation 5: The refund mechanism

[66] Based on the decision above, this court finds no merit in the defendant's argument about the refund. Regulation 5 of the 2011 Regulations allows refunds only for overpayments. It does not support retrospective adjustments

based on subsequent sales. The defendant never requested a refund, undermining its own argument that payments were provisional.

Estoppel and the conduct of the defendant

[67] The defendant acknowledged and warranted in the SCC Form K-1 that the information provided was true, complete, and accurate, and undertook to pay any shortfall immediately upon notification.

[68] The defendant also undertook to submit supporting documents within seven days of any request by the plaintiff.

[69] The learned sessions court judge found that the defendant delayed the verification process by submitting incomplete and redacted documents, which prevented the plaintiff from discovering the shortfall earlier.

[70] This conduct was material to the learned sessions court judge's finding that the cause of action only accrued later, thereby undermining the defendant's limitation defence.

[71] The learned sessions court judge also found that if the defendant had, in fact, believed that it was entitled to a refund, it would surely have made such a claim earlier. This inaction or abject silence militates against the claim for a refund. Such a claim is therefore without merit.

[72] This court affirms the findings of the learned sessions court judge on this point.

Is reliance on s 6A of the Limitation Act 1953 correct?

[73] Contrary to the defendant's suggestion, the learned sessions court judge did indeed address his mind to the issue of limitation. The question is whether this was a correct application of the law to the facts.

[74] The learned sessions court judge commenced this analysis by addressing his mind to the event timeline and the defendant's declaration in the SCC Form K-1.

[75] The learned sessions court judge then went on to examine the plaintiff's efforts to verify the details to ascertain payment and the defendant's delays in providing the requested information, coupled with the defendant's provision of redacted information.

[76] The learned sessions court judge then examined s 6A of the Limitation Act 1953, which states:

> (1) Notwithstanding subsection 6(1), this section *shall apply to any action for damages for negligence not involving personal injuries*, where the starting date for calculating the period of limitation under subsection (2) falls after the date on which the cause of action accrued.
>
> (2) An action to which this section applies shall not be brought after the expiration of three years from the starting date if the period of three years expires later than the period of limitation prescribed in subsection 6(1). (Emphasis added.)

[77] The defendant, in raising the limitation defence, 'took offence' to the reference to s 6A of the Limitation Act 1953 on the basis that it is only applicable to cases in negligence which do not involve personal injuries. The question to consider is whether the learned sessions court judge was correct in invoking and applying s 6A of the Limitation Act 1953?

[78] To answer this question, reference must be made to the plaintiff's pleaded case, as any court can only determine issues that are raised in pleadings.

See: *RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd* [2010] 2 MLJ 188; [2010] 1 CLJ 665 (FC) at para 35:

> On this, we would like to add that it is not the duty of the court to invent or create a cause of action or a defence under the guise of doing justice for the parties lest it be accused of being biased towards one against the other. The parties should know best as to what they want and it is not for the court to pursue a cavalier approach to solving their dispute by inventing or creating cause or causes of action which were not pleaded in the first place. Such activism by the court must be discouraged otherwise the court would be accused of making laws rather than applying them to a given set of facts.

[79] Further, reference is made to paras 10 and 11 of *Cekap Mesra Development Sdn Bhd v Che Seman bin Abdullah* [2021] MLJU 2292; [2021] CLJU 1817 in the judgment of Choo Kah Sing J (as His Lordship then was), where the following is instructive:

> [10] In the event the plaintiffs claim was premised on the action of negligence in tort, then the statement of claim failed to disclose any cause of action of a tort action. The statement of claim *failed to particularize the duty(ies)* of the defendant and the breach of the defendant's duty(ies) (if any). This court observes that in the plaintiff's reply to the defence (see *Rekod Rayuan Jld 1 Bahagian A*, pp 31–34), particularly paras 3(a) and 5(c), the plaintiff mentioned that the defendant has a 'duty of care' as a developer to adhere to certain standards, but these pleadings could hardly reveal an action for tort of negligence.
>
> [11] A cause of action has to be pleaded and disclosed in a statement of claim, not

in a reply to a defence (see *Deepak Jaikishan a/l Jaikishan Rewachand & Ors v Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors* [2020] MLJU 1282; [202011 LNS 1008; [2020] 6 MLRH 558, pp 567–68, HC).

[80] Further, a reading of O 18 r 12(1) of the RC 2012 and a review example 15 of this Rule in the 'Malaysian Civil Procedure' (the Malaysian 'White Book') shows that when negligence is pleaded, then the particulars of the same must be pleaded to put the opponent on notice of the particulars that would be relied on to enable the opponent to meet the issue. The plaintiff did not plead the particulars of negligence.

[81] The plaintiff's cause of action is not premised upon negligence but rather on a statutory breach and an underpayment of a regulatory contribution. The mere use of the word 'cuai' in para 11 of the plaintiff's statement of claim, without more, does not convert the claim to one premised upon negligence.

[82] In para 11 of the statement of claim, the plaintiff pleaded:

> 11. Walau bagaimanapun, sehingga kini, defendant masih tetap enggan, ingkar, gagal dan/atau cuai untuk membayar keseluruhan Jumlah Terhutang.

[83] From a reading of the statement of claim, it is clear that the plaintiff's claim was for the defendant to make the necessary underpayments. It was not the case that the defendant was negligent in making payment. The plaintiffs' pleadings and submissions indicate that their case is based on the defendant's breach for failing to comply with the relevant statute and regulations, as well as their own misinterpretation of the provisions. The defendant was duty-bound to make such a payment and failed to do so.

[84] Limitation, when properly invoked, is a complete defence, and in this regard, must be pleaded, as required by s 4 of the Limitation Act 1953. The plaintiff, in defending this position against limitation in its reply at para 5, pleaded as follows:

> Paragraph 10 of the Defence & CC, that the plaintiff's claim is time-barred, is thus denied. The shortfall could only have been verified from 2023 when full documentation was finally provided to the plaintiff by the defendant.

[85] This court finds that the learned sessions court judge erred when invoking s 6A of the Limitation Act 1953 to decide against the defendant's application that the suit was barred by limitation. The reliance on s 6A was misconceived because it was not pleaded. In any event, it was inapplicable to the facts, as there are no issues of negligence or damages in these factual circumstances.

The FC judgment of Julian Chong cited by the learned sessions judge states the following at the last sentence of para 22:

> To some extent there are inroads introduced vide the Limitation (Amendment) Act 2018 (Act A1566/2018) with the new ss 6A and 24A; but *that is from the aspect of discoverability of damage.*

[86] This is evident from the relief sought by the plaintiff, which shows that the plaintiff was claiming a debt and not damages. This is seen from para 13 of the statement of claim:

> 13. OLEH ITU, Plaintif menuntut daripada Defendan:
>
> 13.1 Jumlah Terhutang tersebut, sebanyak RM660,639.70;

[87] Therefore, the sessions court judgment applying s 6A was misconceived and cannot be relied upon.

[88] Notwithstanding this, the question is whether the defendant's pleaded case of s 6 of the Limitation Act 1953 on limitation holds; and whether the plaintiff's claim ought to be dismissed or struck out, notwithstanding that its case was proven, on the basis that because of limitation, the plaintiff's claim was unenforceable, or whether the matter on this point ought to be remitted back to the sessions court to be tried.

[89] The defendant expressly pleaded s 6 of the Limitation Act 1953 in para 10 of the defence. Therefore, the defendant complied with s 4 of the Limitation Act 1953.

[90] The defendant relied on s 6 of the Limitation Act 1953, and for these appeals, the specific provision would be s 6(1)(d) of the Limitation Act 1953, which states:

> (d) actions to recover *any sum recoverable by virtue of any written law* other than a penalty or forfeiture or of a sum by way of penalty or forfeiture. (Emphasis added.)

[91] The learned sessions court judge based his decision on an unpleaded and irrelevant issue of negligence, relying on s 6A of the Limitation Act 1953.

[92] Is this error fatal to the decision of the sessions court insofar as the issue of limitation is concerned?

[93] By only relying on negligence, the learned sessions court judge erred in not addressing his mind to the following:

(a) a counterclaim is a separate and distinct action that can proceed

notwithstanding judgment being given in the main suit. This is clear from a reading of O 15 r 2(2) and (3) of the RC 2012, and on the authority of *Permodalan Plantations Sdn Bhd v Rachuta Sdn Bhd* [1985] 1 MLJ 157; [1985] CLJ Rep 242;

(b) in *Thein Hong Teck*, the Federal Court said:

> It was trite law that O 14A of the RHC could only be resorted to if there was no dispute by the parties as to the relevant facts, or the court concluded that the material facts were not in dispute. In the present case there were serious disputed facts involved and these issues of fact were interwoven with the legal issues raised. As such, the Court of Appeal was correct in finding that O 14A of the RHC was not suitable for the purpose of determining the applicability of s 314 of the Act to the partnership in the present case.

(c) where a lower court has misconstrued the law or failed to consider material evidence, the higher court can intervene and make orders that are fair and just to all parties.

[94] The sessions court identified that the issue of limitation did not feature in this case on the basis that the defendant had only provided all the necessary unredacted information on 2 October 2023, meaning that the cause of action only accrued at this time. The learned sessions court judge relied on the Federal Court's decision in *Julian Chong Sook Keok & Anor v Lee Kim Noor & Anor* [2024] 3 MLJ 544, where the court said:

> This court agreed with the COA's approach in *Sabarudin bin Othman & Anor v Malayan Banking Bhd and another appeal* [2018] MLJU 304 *and Am Bank (M) Bhd v Kamariyah bt Hamdan & Anor* [2013] 5 MLJ 448 that knowledge or discoverability of the breach with reasonable diligence was essential for the purpose of determining whether a cause of action had accrued.

[95] Therefore, despite the sessions court's consideration of the unpleaded issues of negligence and s 6A of the Limitation Act 1953, which are erroneous on these facts, there is ample evidence to show this court that the decision to dismiss the defendant's application in Appeal No 15 was correct.

[96] This court does not find any prejudice visited on the defendant by the learned sessions judge's reliance on s 6A of the Limitation Act 1953. The learned judge may have addressed his mind to an unpleaded issue, but his appreciation of the facts as to when the cause of action arose for the purposes of assessing when time ought to run was correct. Time only began to run from 2 October 2023, that is, the date when the defendant provided the plaintiff with the unredacted list. It was only from this list that the plaintiff was able to begin to calculate what sum, if any, was due from the defendant.

[97] Therefore, this court finds that there is no utility to be served by remitting this matter back to the sessions court for a trial solely on the issue of limitation, as this would, in this court's view, merely prolong the inevitable, and more importantly, would amount to a waste of judicial time and resources.

[98] Appeals Nos 14 and 15 are therefore dismissed with costs of RM9,000 for each appeal, subject to allocatur.

Appeals dismissed.

Reported by Nabilah Syahida Abdullah Salleh